



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

**[Docket DARS-2023-0006]**

**RIN 0750-AL39**

**Defense Federal Acquisition Regulation Supplement: Restrictions on Overhaul and Repair of Naval Vessels in Foreign Shipyards (DFARS Case 2021-D021)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that restricts overhaul and repair of a naval vessel in a shipyard outside the United States or Guam.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2021-D021, using any of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for "DFARS Case 2021-D021." Select "Comment" and follow the instructions to submit a comment. Please include "DFARS

Case 2021-D021" on any attached documents.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2021-D021 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bass, telephone 703-717-3446.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). Section 1025 amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam. The restriction does not apply to voyage repairs or to repairs required for damage sustained due to hostile actions or interventions. In addition, the restriction does not apply to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance.

The proposed rule also establishes the criteria under which foreign workers or foreign contractors may be used to perform

corrective and preventive maintenance or repair or facilities maintenance on a naval vessel.

## **II. Discussion and Analysis**

### *A. Overhaul and Repair Restrictions*

The proposed revisions to the DFARS implement the 10 U.S.C. 8680(a) restrictions and identify the exceptions for the repair of damage sustained as a result of hostile actions or interventions and for corrective and preventive maintenance and facilities maintenance on a littoral combat ship operating on deployment. DFARS 225.7013 is revised to add definitions at 225.7013-1 and expand restrictions at 225.7013-2.

### *B. Definitions*

DFARS 225.7013-1, Definitions, is added to define the terms "corrective and preventive maintenance or repair" and "facilities maintenance" as defined in 10 U.S.C. 8680.

### *C. Restrictions and Exceptions*

DFARS 225.7013-2(a) restates the restriction previously located at DFARS 225.7013(a) to not award a contract to construct a vessel or major component of a vessel in a foreign shipyard. DFARS 225.7013-2(b) provides the restriction to not overhaul, repair, or maintain in a shipyard outside the United States or Guam, except the restriction does not apply to: (1) voyage repairs or repairs necessary to correct damage sustained due to hostile actions or interventions; and (2) corrective and preventive maintenance or repair or facilities maintenance on a

naval vessel classified as a littoral combat ship operating on deployment.

#### *D. Foreign Workers and Contractors*

DFARS 225.7013-2(b) also specifies the circumstances in which foreign workers and contractors may be used to maintain or repair littoral combat ships operating on deployment. Foreign workers may be used only if the Secretary of the Navy, without further delegation, determines that travel by U.S. Government or contractor personnel is not advisable for health or safety reasons. Foreign contractors may be used to perform facilities maintenance only as approved by the Secretary of Navy.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Products, Including Commercially Available Off-the-Shelf Items, and Commercial Services**

This proposed rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

### **IV. Expected Impact of the Proposed Rule**

Currently, DFARS 225.7013 includes the restrictions on the construction or repair of vessels in foreign shipyards. This proposed rule adds the exception for repairs necessary to correct damage sustained due to hostile actions or interventions and for corrective and preventive maintenance or repair and facilities maintenance on naval vessels classified as littoral

combat ships operating on deployment. Under these exceptions, the repairs or maintenance described above may be performed in a shipyard outside the United States or Guam in accordance with 10 U.S.C. 8680(a). The proposed rule also specifies the authorized use of foreign workers under certain conditions when a determination is made by the Secretary of the Navy, who cannot further delegate the authority to make such a determination.

## **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## **VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only includes the restrictions on the construction or repair of vessels in shipyards outside the

United States or Guam. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD proposes to amend the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283) that amends 10 U.S.C. 8680(a). Section 1025 restricts the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, unless the repairs are: (1) voyage repairs or repairs necessary to correct damage sustained due to hostile actions or interventions; or (2) to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance. The proposed rule also establishes that: (1) foreign workers may not be used to perform corrective and preventive maintenance or repair on a naval vessel, unless the Secretary of the Navy (without further delegation) makes a determination; and (2) foreign contractors may not be used to perform facilities maintenance unless approved by the Secretary of the Navy.

The objective of the proposed rule is to implement the restrictions of section 1025. The legal basis for the proposed rule is section 1025 of the NDAA for FY 2021.

DoD reviewed data from the Federal Procurement Data System (FPDS) for fiscal years 2019, 2020, and 2021 for contracts for the repair or overhaul of naval vessels outside the United States or Guam that exceeded the simplified acquisition

threshold. DoD awarded a total of 379 contracts to an average of 222 unique small entities.

It is expected that this proposed rule will continue to provide small businesses the opportunity to participate in acquisitions for the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, since naval vessel overhaul restrictions currently exist and this rule provides exceptions that allow for U.S. contractor personnel to perform certain repairs and maintenance in accordance with 10 U.S.C. 8680.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the requirements of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2021-D021), in correspondence.

## **VII. Paperwork Reduction Act**

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Part 225**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 225 is proposed to be amended as follows:

#### **PART 225—FOREIGN ACQUISITION**

1. The authority citation for 48 CFR part 225 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 225.7013 to read as follows:

**225.7013 Restrictions on construction or repair of vessels in foreign shipyards.**

3. Add sections 225.7013-0, 225.7013-1, and 225.7013-2 to read as follows:

**225.7013-0 Scope.**

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

**225.7013-1 Definitions.**

As used in this section—

*Corrective and preventive maintenance or repair means—*



(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

*Facilities maintenance* means the effort required to—

(1) Provide housekeeping services throughout the ship;

(2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(3) Clean mechanical spaces, mission zones, and topside spaces.

#### **225.7013-2 Restrictions.**

(a) *Contract award (10 U.S.C. 8679)*. Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) *Overhaul, repair, or maintenance (10 U.S.C. 8680)*. (1) Do not overhaul, repair, or maintain, in a shipyard outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

(2) This restriction on overhaul, repair, or maintenance does not apply to—

(i) Voyage repairs;

(ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment—

(i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel—

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel.

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons.

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of Navy.